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Attorneys for Defendant
LAND HOME FINANCIAL SERVICES, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARCUS MANNING, VIRIDIANA LOPEZ
GARCIA,

Plaintiffs,

v.

LAND HOME FINANCIAL SERVICES, INC.,

Defendant.

Case No.: 3:21-cv-06505 WHO

**NOTICE OF MOTION AND MOTION TO
DISMISS FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN BE
GRANTED (FRCP 12(b)(6))**

Date: November 17, 2021
Time: 2:00 PM
Judge: Hon. Judge William H. Orrick
Ctm: 2

TO THE PLAINTIFFS MARCUS MANNING, VIRIDIANA LOPEZ GARCIA:

PLEASE TAKE NOTICE that on November 17, 2021, or as soon thereafter as the matter may be heard in the above-entitled court, located at 450 Golden Gate Avenue, San Francisco, California, defendant LAND HOME FINANCIAL SERVICES, INC., will move the Court to dismiss the action pursuant to FRCP 12(b)(6) on the basis that Plaintiffs' Complaint fails to state a claim upon which relief can be granted, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, because Defendant is not alleged to be an agency subject to the enactment.

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1 This Motion will be based on this Notice of Motion and Motion, the Memorandum of Points
 2 and Authorities filed herewith, the Request For Judicial Notice and the pleadings and papers filed
 3 herein.

4 DATED: October 6, 2021

JOHNSTON | THOMAS, Attorneys at Law, PC

5 By: /s/ Ryan F. Thomas

6 Ryan F. Thomas

7 Anthony Bentivegna

8 Attorneys for Defendant

9 LAND HOME FINANCIAL SERVICES, INC.

10 STATEMENT OF ISSUES

11 This motion presents the issue of whether relief can be granted under the FOIA when there
 12 is no allegation that Defendant is an agency.

13 STATEMENT OF FACTS

14 Plaintiffs MARCUS MANNING and VIRIDIANA LOPEZ GARCIA filed their Complaint
 15 For Declaratory and Injunctive Relief on August 23, 2021. See the companion Request For Judicial
 16 Notice. All page and line references are to this pleading.

17 They allege rights as borrowers pursuant to the Truth in Lending Act (“TILA”), 15 U.S.C. §
 18 1601, and its enabling provision, Regulation Z, 12 CFR 1026. Complaint, pp. 1:19-2:4, 3:10-
 19 4:18.

20 They further allege that in June of 2021 they issued a FOIA request to their Lender,
 21 Defendant LAND HOME FINANCIAL SERVICES, INC., seeking “exemplified copies of full
 22 accounting, which includes debt transmittal, closing documents, accounting package and wire
 23 transfer history regarding account no: 382725,” and that Defendant failed to respond to the request.
 24 Complaint, p. 2:16-22. The substance of these allegations is repeated at 4:21-5:2.

25 Plaintiffs seek an order declaring that the alleged failure to respond was unlawful, an order
 26 compelling a lawful response and attorneys fees. Complaint, p. 5:6-17.

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ARGUMENT

The FOIA, 5 U.S.C. § 552, allows for certain injunctive and other appropriate relief to compel the disclosure and release of agency records. “Agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include— (A) the Congress; (B) the courts of the United States; (C) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia. . . . 5 U.S.C. § 551(1). The term is further defined in 5 U.S.C. § 552(f)(1):

“[A]gency” as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

The U.S. Supreme Court held that a private entity that is a federally funded grantee is not subject to the FOIA. *Forsham v. Harris*, 445 U.S. 169 (1979).

It is universally acknowledged that the FOIA generally applies only to federal agencies. See, e.g., *St. Michael’s Convalescent Hospital v. California*, 643 F.2d 1369, 1372 (9th Cir. 1981); *Gilmore v. United States DOE*, 4 Fed.Supp.2d 912 (N.D.Cal. 1998).

In this action, Plaintiffs do not allege that Defendant LAND HOME FINANCIAL SERVICES, INC., is an agency within the meaning of the FOIA. It instead alleges that it is a corporate lender. Because Defendant is not subject to the FOIA, Plaintiffs’ claims under that enactment must fail.

For the reasons set forth above, Defendant respectfully requests that its motion to dismiss be granted without leave to amend.

DATED: October 6, 2021

JOHNSTON | THOMAS, Attorneys at Law

By: /s/ Ryan F. Thomas
 Ryan F. Thomas
 Anthony Bentivegna
 Attorneys for Defendant
 LAND HOME FINANCIAL SERVICES, INC.